Supreme Court, U.S.
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No. (1)

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In The

SUPREME COURT OF THE UNITED STATES

October term 2001

JOE JONES, D/B/A MELDER PUBLISHING COMPANY
Petitioner(s)

v.

JOSEPH JOHNSON AND WARDELL QUEZERGUE
TUFF N RUMBLE MANAGMENT, INC.
D/B/A TUFF CITY RECORDS
Respondent(s)

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

PETITION OF WRIT OF CERTIORARI

JOE JONES
D/b/a Melder Publishing
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37pp

QUESTIONS PRESENTED

Does a power of attorney signed by plaintiffs, Joseph Johnson on April 20, 1992, an authorization signed by plaintiff, Joseph Johnson on April 20, 1992, notarized in the Custodian of Notarial Records for the Parish of Orleans, State of Louisiana, on April 20, 1992, a PA Form signed by plaintiff, Joseph Johnson in 1992, under the 1909 Act § 10. First publication published in 1964 under the 1901 Act § 10. Dose all the above constitute copyright infringement under U.S.C.A Title 17 § 507 (b)? This action was brought before the United States District Court Eastern District of Louisiana on May 4, 1999.

Whether an appeals court panel, sua sponte , may selectively dismiss an appeal for summary judgement when the clerk of the court did not inform petitioner by order, to brief the issue whether the court had jurisdiction over the appeal. Petitioner could not reply to something petitioner did not receive from the court.

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TUFF N RUMBLE MANAGMENT, INC.
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Respondent(s)

On Petition for a Writ of Certiorari
To the United States States Court Of Appeals
For The Fifth Circuit

PETITION OF WRIT OF CERTIORARI

Joe Jones, d/b/a Melder Publishing Company respectfully petitions for a *writ of certiorari* to review the judgement of the United States Court of Appeal for the Fifth Circuit in this case.

OPINIONS BELOW

The court of appeals' dismissal of the appeal dated April 11, 2001, (App., infra, 2a) is unreported. The appellant's petition for rehearing was denied on June 19, 2001. The district court's finding appellant guilty of copyright infringement under U.S.C. Title 17 Copyright. The district court final judgement in favor of plaintiffs dated February 6, 2001. The district court denied Joe Jones, d/b/a Melder Publishing Company's motion for reconsideration and issued a memorandum opinion, and given his rational for his denial of the motion for reconsideration.

JURISDICTION

The court of appeal dismissal of the appeal dated April 11, 2001. The Court of appeal denied Joe Jones, d/b/a Melder Publishing Company's petition for rehearing. This court has jurisdiction § 1254(1). under 28 U.S.C.

STATEMENT

a. Introduction

The appeals court panel selectively and improperly dismissed the appeal in this case, sua sponte, due to what appellant hope is a misunderstanding regarding the timeliness of his motion for reconsideration in the lower court, and the judgement rendered

against petitioner in the lower court for copyright infringement which was an erroneous error. The district court judge disregarding U.S.C. Annotated Title 17 § 507 (b). Whereas plaintiff, Joseph Johnson signed a *power of attorney* on the 20th day of April, 1992, and a *authorization* on April 20, 1992. Joseph Johnson signed a PA Form Dec 29, 1992. On May 4, 1994, plaintiff, Joseph Johnson filed a lawsuit in the United States District Court Eastern District of Louisiana for copyright infringement against petitioner seven years after plaintiff, Joseph Johnson signed all the documents. The United states District Judge and the Court of Appeal ignored U.S.C.A. Title 17, § 507 (b). The panels' dismissal of the appeal is in conflict with The decision of the United states Supreme Court as **well as the case law of its own circuit.** See Wolksohn v. Hankin , 376, U.S. 203, 11 L. Ed. 2d. 636, 84 S. Ct. 699 (1964); Thompson v. INS. 376. U.S. 384, 11 L. Ed. 2d 404, 84 S. Ct. 397 (19640; Harris Truck Lines, Inc., v. Cherry Meat Packers, Inc., 371 U.S. 215, 9 L. Ed. 2d. 261, 83 s. CT. 283, (1962) Seealso Center for Nuclear Responsibility v. NRC. 251 U.S. App. D.C. 82, 7821 F. 2d. 935, 941 & n.11 (D.C. Cir. 1986); Aviation Enterprises, Inc, v. Orr 230, U.S. App. D.C. 285, 716 F. 2d. 1403, 1406 n. 25 (D.C. Cir. 1983); Webb v. Dep't of Health & Human Services. 225 U.S. App. D.C. 19. 696 F. 2d. 101, 106, (D.C. Cir. 1982); Moore v. South Carolina Labor Board, et al., 100 F. 3d. 162. (D.C. Cir. 1996).

B. **Factual Background and Argument**

Power of attorney signed by Joseph Johnson, notarized on the 20th day of April, 1992 filed with the Custodian of Notarial of Records for the Parish of Orleans, State of Louisiana.

Authorization signed by Joseph Johnson a/k/a Smokey Johnson authorizing Joe Jones to stop the thieves that are embodied in the authorization from stealing from him and not

paying him his money. a copyright registration PA Form # 617-517 for the published version of song entitled "It Ain't My Fault", filed and signed by Joe Jones the authorized agent for Smokey Johnson Publishing Company (effective date of registration December 30, 1992). Although Joe Jones has full power of attorney and authorized agent for Joseph Johnson, the PA Form that Joseph Johnson signed, a/k/a Smokey Johnson signed as author to be filed In the copyright office for Smokey Johnson Publishing Company was inadvertency forgotten and not taken to Washington, D.C. Therefore, Joe Jones used his legal power of attorney -in-fact and authorized agent to sign the PA Form for Smokey Johnson Company and Melder Publishing Company. Re Form, registration No. 638-525 filed for the published version of song entitled "It Ain't My Fault", original claimants Smokey Johnson Publishing Company and Melder Publishing Company, effective date of registration December 30, 1992. Under U.S.C.A. Title 17, the Copyright Act of 1909, song entitled "It Ain't My Fault" was first published in 1964 by Smokey Johnson Publishing Company and Melder Publishing Company through the above publisher. Joseph Johnson, a/k/a Smokey Johnson did not file a copyright for the unpublished version of song entitled "It Ain't My Fault", Parts 1 & 2 in 1964, and he did not sign a Eu Form according to the registration for the unpublished version of song entitled "It Ain't My Fault", registration No. EU 831254.. Wardell Quezergue filed the Eu Form for the unpublished version of "It Ain't My Fault" Parts 1 & 2 printing Joseph Johnson's name as the author for the unpublished version giving Joseph Johnson's address as his own and having the copyright registration sent to his home address on June 22, 1964 . Wardell Quezergue signing as copyright claimant. Joseph Johnson, a/k/a Smokey Johnson and Wardell Quezergue being the author of the unpublished version of song entitled "It Ain't My Fault" Parts 1 & 2 filed no renewal for their unpublished version. Eu No. 831254 for the unpublished

version was filed on June 2, 1964 was in the twenty-eight year and the last year to for it to be renewed. Joe Jones As Joseph Johnson authorized agent and attorney-in-fact filed a renewal for the published version of song entitled "It Ain't My Fault" Eu No. 831254, renewal claimants Joseph Johnson and Wardell Quezergue did so to fully protect Joseph Johnson and as a gift to Wardell Quezergue. Renewal No. 607419 effective date of registration December 30, 1992, which in registered as authorized agent and attorney-in-fact for Joseph Johnson.

There are genuine and compelling facts as to which there exist genuine issues. On April 20, 1992, Joseph Johnson signed a full power of attorney with Joe Jones, which is in volume 2 of records on appeal page numbers 0000482-000483-000484-000485 and 000486.. Notarized on April 20, 1992 by a notary public and attorney Glaude Gasper, filed in the Custodian of Notarial Records for the Parish of Orleans, State of Louisiana.. Record book # 1156-C, Folio 58- No. 930717 on April 20, 1992.

On April 20, 1992, the same day Joseph Johnson signed the full power of attorney to Joe Jones, Joseph Johnson also signed an authorization, page numbers 000488 through 000489, volume 1 of records of appeal. As agent by authorization and full power of attorney, agent, Joe Jones signed as Joseph Johnson's agent a PA Form on December 29, 1992 forming Smokey Johnson Publishing Company as co-copyright owner for the published version of song entitled "It Ain't My Fault" PA No.617-517 and as copublisher with Melder Publishing Company, page No. 000491- volume 2 in the records on appeal.

On page 000493- volume 2 in the records on appeal, Joseph Johnson signed the PA form forming Smokey Johnson Publishing Company as coauthor and copublisher of song entitled "It Ain't My Fault" and Melder Publishing Company for the published version of song entitled "It Ain't My Fault."

After arriving in Washington, D.C. at the copyright office, petitioner realized that he had inadvertency left the PA Form that Joseph Johnson signed for Smokey Johnson Publishing Company and Melder Publishing Company as the claimants for the published version of song entitled "It Ain't My Fault" at his office. Joe Jones, as the authorized agent for Smokey Johnson Publishing Company filed a RE registration No. 63825 on December 30, 1992. Under the copyright Law of the United States of Ame.ica, U.S.C. A Title 17- Copyrights § 10- of the 1909 Act- Publication of Work with a Notice of Publication- which is in volume 2 in the records on appeal is in compliance with the 1909 Act of copyright § 10. The songwriter's contract signed by Joseph Johnson, a/k/a Smokey Johnson on pages 000378-000379-000381 and 000382- volume 2 in the records of appeal assigning 50% share as author of song entitled " It Ain't My Fault' to Smokey Johnson Publishing Company and Melder Publishing Company. Smokey Johnson Publishing Company was formed for Joseph Johnson by Joe Jones as his agent and with full power of attorney in order for Smokey Johnson Publishing Company to be copublisher of the published version of song entitled "It Ain't My Fault" with copublisher Melder Publishing Company by a songwriter's contract signed by Joseph Johnson for the 1909 Act covering publication which was published in 1964 which is on page 000496- volume 2 in the records of appeal. Joseph Johnson signed an affidavit on August 19, 1998 which was false and untruthful. Joseph Johnson committed fraud and perjury when he signed the affidavit knowing that he had no authority to do so which is on page 00036 volume 1 in the record on appeal. On January 22, 1999, attorney Packard E. Philips wrote petitioner a letter informing him that he represents Joseph Johnson which had no authority to do so which is on page 00037- volume 2 in the records of appeal. On February 5, 1999, Packard E. Phillips wrote another letter to petitioner concerning Joseph Johnson, a/k/a Smokey Johnson and song entitled "It Ain't

My Fault" which he had no authority to do so which is on page 00038-volume 1 in the records of appeal.

On July 16, 1998, Joseph Johnson, a/k/a Smokey Johnson signed yet another *affidavit* employing the law *firm* of Eveline, Davis and Philips to represent him, which Joseph Johnson had no authority to do so since Joe Jones had full power of attorney by law. On April 23, 1999, some attorney wrote a letter that was signed by Joseph Johnson which they had no authority to do so which on page 00039- volume 1 in the record on appeal. On February 10, 2000, Joseph Johnson signed yet another affidavit in reference to Joseph Johnson as coauthor of song entitled "It Ain't My Fault" which was without any merit.

No one ever said that Joseph Johnson and Wardell Quezergue were not the sole composers of the musical composition "It Ain't My Fault." Joseph Johnson and Wardell Quezergue are the sole copyright owners of the unpublished version of song entitled "It Ain't My Fault." Joseph Johnson of Smokey Johnson Publishing Company and Joe Jones of Melder Publishing Company are the copyright owners of the published version of song entitled "It Ain't My Fault." Joseph Johnson did assign his writer's share to Smokey Johnson Publishing Company which he owns and Melder Publishing Company which is owned by Joe Jones under the PA Form No. 617-527, effective date of copyright December 30, 1992 for the published version of song entitled "It Ain't My Fault", copyright claimants Smokey Johnson Publishing Company and Melder Publishing Company.

RESASONS FOR GRANTING THE PETITON

Does a power of attorney signed by plaintiffs, Joseph Johnson on April 20, 1992, an authorization signed by plaintiff, Joseph Johnson on April 20, 1992, notarized in the Custodian of Notarial Records for the Parish of Orleans, State of Louisiana, on April 20, 1992, a PA Form signed by plaintiff, Joseph Johnson in 1992, under the 1909 Act § 10. First publication published in 1964 under the 1901 Act § 10. *Does* all the above constitute copyright infringement under U.S.C.A Title 17 § 507 (b)? This action was brought before the United States District Court Eastern District of Louisiana on May 4, 1999. Whether an appeals court panel, sua sponte., may selectively dismiss an appeal for summary judgement when the clerk of the court did not inform petitioner by order, to brief the issue whether the court had jurisdiction over the appeal. Petitioner could not reply to something petitioner did not receive from the court.

CONCLUSION

I am in the hope and in the name of justice that the Supreme Court Judges reconize that District Court Judge Sarah Vance erred in granting the plaintiff a summary judgement and sanctions against pettioner. When you review the power of attorney and the authorization that was signed by Joseph Johnson on April 20, 1992, you will see that these are the same people Joseph Johnson *authorized* me to investigate and for me to employ an attorney to sue. After reviewing the *power of attorney* and the authorization signed by Joseph Johnson on April 20, 1992 you will agree that someone is not telling the truth.

The question raised in this petiton are extremely important. They concern the fundamental right to an appeal of a district court decision. The issues also concern every citizen's constitutianal right to do process of law and equal protection of thise rights. The Court must protect the right to an appeal and the rights of every citizen to recieve equal and fair treatment in the Justice system. Therefore, petitoner is requesting that the summary judgment and sanctions be overturned and sent back to the United States District Court and this petiton for a *writ of certiori* should be granted

See; .Adickes v. S.H. & Kress Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L. Ed.2d. 142 (1970)David Currir. Thoughts on Directed Verdicts and Summary Judgments 45 U Chi. Rev. 729 (1977).First Nat. Bank of Arz v. Cites Services Co.,391 U.S. 253, 88 S. CT. 1575., 20 L. Ed. 2d. 569 (1968); reh'g denied, 393 U.S. 901, 89 s. Ct. 63, 21 L Ed. 2d 188 (1968). Jack Friedenthal. Cases on Summary Judgement: Has There Been A MateriAl Change in StaNdards? 63 Notre Dame L. Rev. 770, 755, 76 (1988) Linda Mullenix. Summary Judgment: Taming The Beast of Burdens. 10 Am J Trial AdvoocAcy 433, 442,(1987) (citing First Nat Bank of Arz. V. Cities Service Co., 391 U.S. 253, 288, 88 S. Ct. 1575, 20 L. Ed. 2d. 569 Norfolk Mounment Co. V. Woodlawn Memorial Gardens, Inc. 394 U.S. 700, 89, S.Ct. 1391, 22 L. Ed.2d. 658 (1969) Norfolk Mounment, 394 US at 704 (observing that "the alledged consiracy had not been conclusively disproved by pretrial discovery") (emphasis added). See Paul Rogers, summary Judgments in Anitrust Conspiracy Litigation, 10 Loy U Chi, L J 667, 674 (1979) Statues: Copyright Laws of U.S.C.A. the 1909 Act § 10- U.S.C.A. Title 17 § 507 (b)

Respectfully submitted

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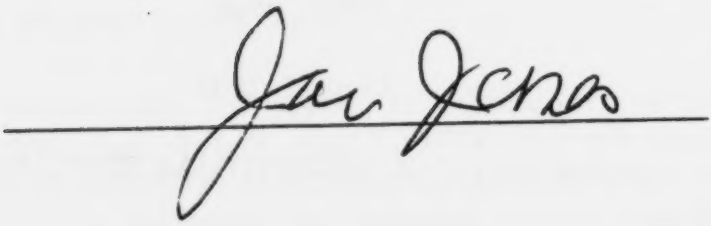

APPENDIX "A"

Joseph Johnson, Wardell Quezurgue
Plaintiffs- Appellants,

Tuff N Rumble Management, Inc., Et al
Defendants

Joe Jones, Jr., doing business as Melder Publishing Company
Defendants- Appellee

No. 00-30647

United States Court of Appeals,
Fifth Circuit

April 11, 2001

Before JOLLY, HIGGINBOTHAM, AND JONES, Circuit Judges.

PER CURIAM:

After Joe Jones, Jr., filed a notice of appeal from the district court's order granting the plaintiff-appellees' motion for summary judgment and imposing sanctions against him pursuant to Fed. R.Civ. P. 11, the clerk of this court ordered the parties to brief the issue whether this court had jurisdiction over the appeal. Jones has not done so.

Pursuant to 5th Cir. R. 47. 5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47. 5.4.

Under 28 U. S. C. § 1291, federal appellants courts have jurisdiction over appeals from final orders and " a small class of orders, which finally determine issues separate from the merits of the case." See Dardar v. Lafourche Realty Co., Inc., 849 F. 2d 955, 957 (5th Cir. 1988).

The district court's summary judgment determination that Jones did not own a copyright interest does not conclusively determine the copyright-infringement claim and thus does not fall under the collateral-order doctrine. See Matter of Aucoin, 35 F.3d 167, 170 (5th Cir. 1994); Lakerdeams v. Taylor 932 F. 2d 1103, 1107 (5th Cir. 1991), The court's order awarding Rule 11 sanctions is not final under § 1291 and is not appealable pursuant to the colleral-order doctrine. Click v. Abilene Nat'l Bank, 822 F. 2d 544, 545 (5th Cir. 1987).

Accordingly, the appeal is DISMISSED for lack of jurisdiction. See Fed. R. App. P. 34 (a) (2). All outstanding motions are DENIED. In addition, we IMPOSE $ 500 sanction against Jones for filing this frivolous appeal and for the contumacious language in his appellate filings.

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

JOSEPH JOHNSON, ET AL.	PLAINTIFFS
vs.	CIVIL ACTION NO. 99-1374
TUFF N RUMBLE MANAGEMENT, INC., ET AL.	DEFENDANTS

ORDER AND REASONS

Before the Court are the motions of plaintiffs, Joseph Johnson and Wardell Quezergue, for summary judgment and Rule 11 sanctions against defendant, Joe Jones d/b/a Melder Publishing Co. For the following reasons, plaintiffs' motions are GRANTED.

I. BACKGROUND

This copyright infringement case involves the rights to a song entitled *It Ain't My Fault.* Plaintiffs, Joseph Johnson and Wardell Quezergue, claim that they are the sole composers and copyright owners of the song. (See Pls.' Mot. Summ, J. Ex. B, Quezergue Aff.; Ex. C., Johnson Aff.) Quezergue registered a copyright to *It Ain't My Fault* with the United States Copyright Office on June 22, 1964. (See Def."s Opp'n Mot. Sum. J. Ex. 7.) On the copyright application, Quezergue listed himself and

Johnson as the authors and copyright owners of the song. (See id.) Plaintiffs attest that they never assigned any of their interest in the copyright of the on to Jones, Melder Publishing, or any other entity, form or corporation owned by Jones. (See Pls.' Mot. Sum, J. Exs. B & C). Jones, appearing herein pro se, claims 50% ownership of the song by transfer from Johnson.

The dispute between plaintiffs and Jones arises out of a Power of Attorney signed by Johnson on April 14, 1992, in which Johnson granted power of attorney in all matters connected with the use of *It Ain't My Fault.* (See. Def,'s Opp'n Mot. Summ. J. Ex. 1.)

On December 29, 1992, Jones, as Johnson's authorized agent," filed a copyright registration to *It Ain't My Fault* in the name of Smokey Johnson Publishing Co. & Melder Publishing Co. (See. Id. Ex.4.) The registration completed by Jones and the certificate issued by the U.S. Register of Copyrights list Johnson and Quezergue as the authors of the song and indicate that Smokey Johnson Publishing & Melder Publishing had obtained ownership of the copyright " by written agreement." (See id. Exs. 3 & 4).

On December 30, 1992, Jones filed two copyright renewals relative to the 1964 abnd 1992 registrations. (See id. Exs. 5 & 6). Both renewal documents identify Johnson and Quezergue as authors and Joseph Johnson c/o Melder Publishing and Wardell Quezergue c/o Melder Publishing as copyright owners of *It Ain't My Fault.* (See id. Exs. 5 & 6).

One of the renewal certificates states that the original copyright registration was made in unpublished form on August 1, 1964, while the other states that the original registration was made

in unpublished form on June 22, 1964. (See. id. Exs. 5 & 6).

Plaintiffs now move for summary judgment on the grounds that no genuine issue of fact exists as to whether Jones owns a copyright interest in *It Ain't My Fault.* Specifically, plaintiffs argue that Jones has failed to produce a valid written assignment as required to establish his ownership under federal copyright law. Plaintiffs also move for sanctions against Jones, arguing that his memorandum submitted in opposition to the summary judgment motion violated Rule 11 of the Federal Rules of Civil Procedures. Jones opposes both motions.

II. Discussion

A. Summary Judgment

1. Legal Standard

Summary Judgment is appropriate when there are no genuine issues as to any material facts, and the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56 (c), see also, Celotex Corp, v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986).

A court must be satisfied that no reasonable trier of fact could find for the nonmoving party or, in other words, " that the evidence favoring the nonmoving party is insufficient to enable a reasonable jury to return a verdict In her favor." Lavespere v. Niagara Mach. & Tool Works, Inc., 910 F. 2d. 167, 178 (5th Cir. 1990). Abrogated on other grounds by Little v. Liquid Air Corp., 37 F. 3d 1069 (5th Cir. 1994) (Citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106. S Ct. 2505, 2511 (1986). The moving party bears the burden of establishing that there are no genuine issues of material fact.

If the dispositive issue is one for which the nonmoving party will bear the burden of proof at trail, the moving party may satisfy its burden by merely pointing out that the evidence in the record contains insufficient proof concerning an essential element of the nonmoving party's claim. See Celotex, 477 U.S. at 325, 106 S. Ct. at 2554; see also Lavespere, 910 F. 2d at 278.

The burden then shifts to the nonmoving party, who mus, by submitting that a genuine issue exists. See Celotex, 477 U.S. at 324, 106 S. Ct. At 2553. The nonmovant may not rest upon allegations and denials. See id. at 324, 106 S. Ct at 2552.

2. **Assignment of Copyright**

To prevail on a copyright infringement claim, plaintiffs must prove that they own a valid copyright, and that defendants impermissibly copied or otherwise infringed upon that copyright. See Quinanill v. Texas Television Inc., 139 F. 3d. 494, 50 (5th Cir. 1998) (citing DSC Communications Corp, v. DGI Techs., Inc., 81 F. 3d. 597. 600 (5th Cir.2996). All of the copyright registration and renewal certificates in the record, including those filed by Jones, state that Johnson and Quezergue authored It Ain't My Fault. Accordingly, the Court finds that ownership of the copyright vested with plaintiffs as the song's authors. See 17 U.S.C. § 201(a).

Jones asserts that he obtained a copyright interest in *It Ain't My Fault* by viture of a transfer of ownership from Johnson. The copyright Act permits a copyrigjt owner to transfer his ownership in whole or in part. See 27 U.S.C. § 201(d). However, "[a] transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transferm is in writing and signed by the owner of the rights

conveyed or such owner's duly authorized agent." Id § 204(a) (emphasis added). The writing requirement "ensures that the creator of a work will not give away his copyright inadvertency." Effects Assoc., Inc v. Cohen, 908 F. 2d. 555, 556-57 (9th Cir. 1990).

Plaintiffs argue that no genuine issue of fact exists as to whether Jones owns a copyright interest in *It Ain't My Fault* because Jones has failed to produce a valid written assisgment transferring the copyright from plaintiffs to Jones. Johnson and Quezergue attached affidavits to their summary Judgment Motion stating that they are the sole composers and copyright owners of *It Ain;t My Fault.* See Pls. Mot. Summ. J. Exs. B & C.) Further, that aver that they never assigned any of their copyright Interest in the song to Jones, Melder Publishing Co., or any other entity owned by Jones. (See. Id.)

a. Plaintiffs' Request for Admission Deemed admitted Under Rule 36

Plaintiffs assert that Jones' failure to respond to Request for Admission regarding the existence of an alleged written Assignment warrants summary judgment in their Favor pursuant to Federal Rules of Civil Procedure 36.

On December 321, 1999, plaintiffs mailed to Jones a Request for Production of Documents, Interrogatories and Admissions, by both certified and first-class mail. (See id. Ex. D. Apken Aff.) The Request for Admissions notified Jones to respond within thirty days pursuant to Rule 36. among other requests, plaintiffs asked Jones to admit or deny that he does not have a signed assignment of copyright from Quezergue and Johnson or Smokey Johnson Publishing relating to *It Ain't My Fault.* (See Pls.

Mot. Summ. J. Ex. E, Request for admission Nos. 16 & 18). Plaintiffs also asked Jones to produce any and all assignments of copyright in the song (See id. Request for Production, at 2.) A review of the record indicates that Jones has not yet responded to these requests. Plaintiffs allege that the certified mail was returned marked " refused." (See. Pls. Mem. Supp. Summ. J. At 20.

Rule 36 (a) gives a party served with requests for admission thirty days In which to respond. If the party to whom The request is directed does not answer or object to the admissions withing that time period, the matter is deemed admitted. See Fed. R. Civ. P. 36 (a) Rule 36 (b) adds that "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." The conclusive effect of Rule 36 (b) "applies equally to those admissions made affirmatively and those established by default, even if the matters admitted relate to material facts that defeat a party's clam." American Auto. Ass'n v. AAA Legal Clinic of Jefferson 930 F. 2d 1117, 1120 (5th Cir. 1991) (citations omitted). Here Jones has still not responded to plaintiffs' Request for Admissions, more than four months after plaintiffs mailed them to him. Further, Jones has not moved this Court to withdraw the admissions pursuant to Rule 36 (b). Jones avers that he did not receive or refuse any mail from plaintiffs, and that he first received the Request for admissions as an attachment to plaintiffs summary judgment motion. Jones also asserts that he was in the hospital when then mail was allegedly refused. These arguments do not prevent the admission of the matters requested under Rule 36.

When the request demonstrates that the request for Admissions was mailed to the party's last known street address in accordance with Federal Rule of Civil Procedures 5 (b), the failure to receive a request will not prevent summary judgment based thereon. See in re Mack, 330 F. Supp. 737, 738 (S.D. Tex. 1970) (citations omitted).

The Court finds no reason to disregard the affidavit of Vera Apken, certifying that she mailed the Request for Admission to Jones on December 21, 1999 at his last known street address in California. (See. Pls. Mot.. Summ. J. Ex. D.) The court therefore deems admitted all of the matters raised in plaintiffs' Request for Admissions dated December 29, 1999.

It is well established that admissions, including matters deemed admitted as a result of a party's failure to respond to a request for admission, may form the basis for granting summary judgment. See. Dukes v. South Carolina Ins. Co., 770 F.2d. 545 548-49)5th Cir. 1985); Simien v. Chemical Waste Mgmt, Inc., 30 F. Supp. 2d (39, 942, (W.D. LA. 1998) (citing United States v. Kasuboki, 834 F. 2d. 1345, 1350 (7th Cir. 1987); Mack. 330 F. Supp. At 738 (citing Moosman v. Joseph P. Blitz, 358 F. 2d 686 (2d Cir. 1966); Carter v. Aramco Services Co., 1988 WL 38796, at * 2 (S.D. Tex. April 15, 1988). Because of the admissions establish that Jones does not have a signed assignment of copyright in *It Ain;t My Fault* from Quezergue an, Johnson or Smokey Johnson Publishing, no Genuine issue of fact exists as to whether Jones owns a copyright interest in the song.

b. No Valid Written Assignment

Even without considering the Rule 36 Admissions, the Court finds that summary judgment is appropriate here because

Jones has failed to produce any credible summary judgment evidence to rebut plaintiffs' sworn testimony that they did not assign a copyright interest in *It Ain't My Fault* to Jones or any entity under his control. Jones claims to have obtained rights to the published version of the song by viture of a written assignment from Johnson. In his initial opposition to plaintiffs' summary judgment motion, Jones suggest that because he registered and renewed a copyright in the published version of the song as Johnson's duly authorized agent, a genuine issue exists as to his ownership interest.

Copyright ownership and registration are separate and distant issues. See Author Rutenberg Homes, Inc., v. Drew Homes, Inc., 29 F. 3d. 1529, 1531 (1th Cir, 1994) (citing 17 U.S.C. § 408 (a). "Copyright inheres in authorship and exists whether or not it is ever registered." Id. Jones suggests that his registration and renewal of the copyright in *It Ain't My Fault* on December 29, and 30, 1992 establish that he owns an interest in the song's copyright. It is true that a certificate of registration from the U.S. Register of copyright constitutes prima facie evidence of the validity of a copyright. See 17 U.S.C. § 4210 (c). However, the statutory presumption of copyright validity codified at Section 410 (c)of the Copyright Act Applies only to certifications of registrations made before or within five years after first publication of the work. See id.

As to the works published more than five years before registration, the automatic presumption does not apply, and the Court has direction to determine what weight to give the copyright registrations. See Religious Technology Ctr.v. Netcom On-Line Communication Servs., Inc. , 923 F. Supp. 1231, 1241 (N.D. Cal 1995) (citing 3 Melville B. Nimmer & David Nimmer, Nimmer on Copyright §§ 12. 11 [A],[B].

Here, the certificate of registration issued to Smokey Johnson & Melder Publishing by the U.S. register of copyrights on December 30, 1992, indicates that the work was first published on August 1 ,1964, approximately twenty-eight years earlier. Accordingly, the statutory presumption does not apply. In light pf plaintiffs' evidence of the invalidity of the registration certificate held by Jones, the Court finds the certificate insufficient to substain Jones' burden on summary judgment.

As noted above, Jones can have an ownership interest in *It Ain't My Fault* only if plaintiffs or their duly authorized agent assigned that interest to him by written agreement. A written agreement assigning interests in a copyright must clearly establish that The parties Intended to transfer a copyright interest.. See Schiller & Schmidt, Inc. v. Nordisco Corp., 969 F. 2d. 410, 413 (5th Cir. 1992). Jones suggest that because Johnson granted him power of attorney and authorized him to act as his agent, an issue of fact exists as to whether Johnson assigned an interest in the song to him. The Court has reviewed the Power of Attorney signed by Johnson on April 20, 1992. Nothing in the Power of Attorney or in the updated "Authorization" signed by Johnson indicates that Johnson intended to assign his interest in *It Ain't My Fault to Jones.* That document therefore does not satisfy Section 404 (a).

In his supplemental opposition to plaintiffs' summary judgment motion, Jones produced for the first time an alleged written agreement between Johnson and Smokey Johnson & Melder Publishing. (See. Def,'s Mot. Leave Supp. Opp'n Ex. 3) This "Songwriter Writer(s) Contract," dated August 1, 1964, states that Johnson assigned to Smokey Johnson & Melder Publishing all copyrights in *It Ain't My Fault. Plaintiffs assert that the Contract is a forgery. (See. Pls. Mot, Rule 11 Sanctions, at 4-5).*

In support, they point to numerous characteristics of the document which challenge its authenticity as a document executed in 19864. Firstly, the document was printed on a computer laser printer and In the same type face as Jones' pleadings. Second, the document exhibits word processing features that did nit exist in 1964, including justified text and a word processing file name located in the footer of the first page. Finally, both of Johnson's signatures on the document are identical. After reviewing the songwriters) Contract, the Court agrees with plaintiffs that the Contract is an obvious forgery. As plaintiffs observe, laser printers and personal computers did not exist in 1964. No reasonable jury could find that the preferred document is valid.

Because plaintiffs have properly supported their summary judgment motion, the burden shifts to Jones to establish the authenticity of the purported copyright assignment. *See. Makedwde v. Johnson, 1994, WL 10360, at * 3. (E.D. La. Jan, 5, 1994).* Jones has presented no evidence establishing the authenticity of the Songwriter's Contract and has proffered no other credible evidence that Johnson assigned his copyright interests in *It Ain't My Fault* to him. Accordingly, the Court grants plaintiffs' motion for summary judgment and concludes as a matter of law that Jones does not own a copyright interest in any version, published or unpublished, of *It Ain't My Fault.*

3. Attorney's Fees

Plaintiffs asserts that if the Court grants summary judgment in their favor, they are entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505. Section 505 provides that in a copyright infringement claim, " the court may also award a reason

able attorney's fee to the prevailing party As part of the costs." (emphasis added.) Section 505 does not apply at this time, however, because plaintiffs have not " prevailed" in their copyright infringement action against Jones. By granting plaintiffs ' motion for summary judgment, the Court has declared as a matter of law that Jones does not own a copyright interest in *It Ain't My Fault.*

In order to prevail a copyright infringement action, however, plaintiffs must establish not only that they own the copyright at issue, but that the alleged infringer impermissibly copied of otherwise infringed that copyright. See Quintanilla, 139 F. 3d. At 500. Moreover, the Court notes that another defendant nota party to this motion has asserted that its owns copyright interests in the song. (see. Answer of Tuff N Rumble Mgmt, d/b/a Tuff City Records to Pls.' First amend., Compl., dated March 20, 2000, §§ 37-55,) because plaintiffs have not yet prevailed in this copyright Infringment action, The Court denies their request for attorney's fees under Section 505.

B. **Rule 11 Sanctions**

Plaintiffs also move the Court to santopoñ Jones on the gorunds that he filed motions in oppsition to summary judegment on February 28, 2000 and March 3, 2000 in violation of Federal Rule of Civil Procedure 11. Palintiffs assert that Jones filed fthe oppsiotion motions without conductijng a reasonable inquiry into the facts; that Jones interposed the motins for an improper purpose, namely, harassment, delay and increase in the costs of ilitigation, Plaintiffs also contend that the Songwriter(s) Contrct artached as Exhibit 3 to Jones' supplemental opposition motion is a blantant

forgery. Jones conclusorily rejects these allegations and asserts that the Court should instead impose Rule 11 sanctions on plaintiffs and their counsel.

Although Jones appears in this case pro se., Rule 11 applies equally to attorneys and to unrepresented parties. See Fed. R. Civ. P. 11 (b) ("By presenting to the court . . . a pleading, a attorney or unrepresented party is certifying ...") (emphasis added). See also Hicks v. Bexar County, Texas, 973 F. Supp. 653, 687 (W.D. Tex. 19970. aff'd 137 F. 3d 1352 (5th Cir. 1998) ("The Fifth Circuit has made it clear that Rule 11 applies fully ad completely to actions filed by pro se litigants.") (collecting cases). The rule requires that a party initiate a motion for sanctions separately from other motions or requests and describes the specific conduct alleged to violate subdivision (b). See Fed. R. Civ. P. 11 (c)(1)(A). The motion "shall not be presented to the Court unless, within 21 days after service of the motion, . . . the challenged . . . claim is not withdrawn or appropriately corrected." Id.

Here, plaintiffs sent Jones a letter dated March 10, 2000, warning him that they intended to seek sanctions unless He withdrew the offending motions and attaching a copy of their Rule 11 motion. (See Pls.' Mot. Rule 11 Sanctions Ex. 1.) When Jones did not withdraw his claims within 21 days, plaintiffs filed a separate Rule 11 motion with this Court. Plaintiffs clearly complied with the provisions of Rule 11 (c)(1)(A).

By contrast, Jones did not file a separate motion for Rule 11 sanctions against plaintiffs but instead included the request in his opposition to plaintiffs' motion. The only Rule 11 motion properly before this Court, therefore, is that filed by plaintiffs.

The purpose of Rule 11 is " to deter baseless filings in district court and thus, . . . Streamline the administration and procedure of the federal courts." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393, 110 S. Ct. 2447, 2454 (1990); accord Redd v. Fisher Controls, 147 F. R.D. 128, 130 (W.D. Tex. 1993).

The rule applies to every pleading, written motion, or other paper submitted to the Court. See Fed. R. Civ. P. 11 (a); Thomas v. Capitol Sec. Servs. , 836 f. 2d. 866, 875 (5th Cir. 1998) (enbanc). When an unrepresented party submits a pleading to the court, he certifies to the best of his knowledge, information and belief that; (1) the pleading is not interposed fore any improper purpose, such as to harass or to cause unnecessary delay or increase in the costs of litigation; (2) the pleading is warranted by existing law or a good faith argument for modification of existing law; and (3) the litigant has conducted reasonable inquiry into the factual allegations and denials which support the pleadings. See Fed. R. Civ. P. 11(b); Childs v. State Farm Mut. Auto. Ins. Co., 29 F. 3d. 1018, 1023 (5th Cir. 1994) (Fifth Circuit interprets Rule 11 as imposing three affirmative duties upon attorney or litigant when he sings a *pleading, motion or other document);* American Airlines, Inc. v. Allied Pilots Ass'n 968 F. 2d. 523, 529 (5th Cir. 1992)

Three ways pleading may violate Rule 11: *inadequate legal support, inadequate factual support, and improper purpose)* (citation omitted).

The Court applies an objective, not subjective, standard of reasonableness to determine whether a party has violated these duties.

See Childs, 29 F. 3d. At 1204 (citing United States v. Alexander, 981 F. 2d. 250, 252, (5th Cir. 1993), Thomas, 836 F. 2d. at 873).

The conduct of the attorney or unrepresented party is assessed at the time he submitted the pleading or motion. See Thomas, 836, F. 2d. At 875 (citing Fed. R. Civ. P 11 Adv. Comm. Note).

Jones has clearly violated Rule 11. First, Jones' allegations that a genuine issue of fact exists as to his ownership of a copyright interest in *It Ain't My Fault* were not warranted by existing law or the extension, modification, or reversal of existing law.

In determining whether counsel has made a reasonable legal inquiry, the Court considers the following factors:

(1) *the time available to the attorney;*
(2) *the plausibility of the legal view contained in the document; and*
(3) *the pro se status of the litigant; and*
(4) *the complexity of the legal and factual issues raised.*

See Thomas, 836 F. 2d. at 875-76. The Court granted Jones a seven-day extension of time to file his original opposition to plaintiffs' summary judgment motion and then permitted Jones leave to supplement his opposition. Jones thus had sufficient time to make a reasonable inquiry into the applicable law. Further, the legal issue here is not particularly complex and was set forth simply in plaintiffs' motion for summary judgment:

Jones can have a copyright interest in *It Ain't My Fault* only of plaintiffs transferred that interest to him by viture of a written assignment. Jones nevertheless cited no legal authority in support of his copyright ownership allegations. Instead, he suggested that the Power of Attorney granted to him by Johnson and/or the certificates of the copyright registration that he received from the U.S. Register of Copyrights raise an issue of fact as to his ownership.

This argument is wholly without legal support, as discussed above. Moreover, although the Court considers the special circumstances of Jones' or se status, those circumstances do not weigh in his favor here. A review of the Court's records reveals that Jones has been a party to at least two other copyright infringement actions in this district . See Davis v. Jones, 1994 WL 382571 (E.D. La. July 18, 1994); Makedwde v. Johnson, 1994 WL 10360 (E.D, La. Jan. 5, 1994). Indeed, in Makedwde, Jones filed a copyright infringement action, claiming to have acquired rights in song entitled Carvinal Time by a written assignment. 1994 Wl 10360, at * 1-2 (E. D. La. Jan. 5, 1994). The Court granted summary judgment against Jones, finding that he failed to rebut defendant's evidence that he forged defendant's signature on then alleged songwriter's contract. See id. at *2-3. See also Davis, 1994 Wl 382571, at *1 (granting partial summary judgment against Jones, rejecting his claim to copyright ownership pursuant to certain songwriting contracts).

Jones prior experience clearly demonstrates that he is aware of the legal elements required to properly obtain ownership of a copyright, in particular, the necessity of a valid written assignment. All of these factors indicate that Jones submitted the opposition motion at issue without adequate legal support as required by Rule 11.

Jones also violated Rule 11 by failing to conduct a reasonable inquiry into the facts underlying his motions and by interposing those motions for the purpose of delay, harassment, and increasing the costs of litigation. The evidence reveals that the Songwriter(s) Contract that Jones attached as Exhibit 3 to his supplemental opposition is a forgery of a 1964 document. Presenting a forged document to the Court is certainly not reasonable and warrants the imposition of sanctions under Rule 11. See Bout v. Bolden, 22 F. Supp. 2d 653, (E.D. Mich. 1998) (awarding Rule 11 sanctions against plaintiff who submitted forged memorandum as exhibits to summary judgment opposition), Further, Jones asserts that the affidavit properly filed by Johnson in support of plaintiffs' summary judgment motion Is the product of fraud and perjury. (See. Memo. Supp. Opp'n Summ. J. at 6). Jones offers absolutely no factual support for this allegation And a review of the record reveals none.

The following excerpts from Jones' opposition memorandum demonstrates the inadequate factual inquiry and improper purpose underlying the pleading:

. . . Johnson's affidavit as you can see is fraud, perjury and corruption by the attorney that prepared this fraudulent and corrupted document for Joseph Johnson to sign. Packard Philips being Joseph Johnson's illegally will be proven to be responsible including Mark J. Davis and Gregory Eveleine. This is noting but a vicious scam . . . in order to Packard Philips Wardell Quezergue's attorney to ..... commit a crime of corruption doing business as usual . . ... misusing and abusing the unfortunate, uneducated black artists.

Your Honor, you may want to ask Joseph Johnson if he has a mental problem .... This is a vicious act of stealing all his

rights at high noon. (Memo.Supp. Opp'n Summ. J. at 6-7).

The inclusion of scandalous or indecent matter is itself a strong indication that an improper purpose underlies a motion. See. Fed. R. Civ. P. 11 Adv. Comm. Notes. The Fifth Circuit has held that "[a] busive language towards opposing counsel has no place In documents filed with our courts; the filing of a document containing such language is one from of harassment prohibited by Rule 11." Coats v. Pierra, 890 F. 2d. 728, 734 (5th Cir. 1989). See also Redd, 147 F.R.D. at 132-33 (imposing Rule 11 sanctions when plaintiffs's counsel made unsubstantiated and disparaging remarks in motion against defense counsel. Not only does Jones make disparaging remarks about plaintiffs and their counsel, but he also attacks the integrity of this Court:

Attorney Gregory P. Eveline should be sanctioned along with Wardell Quezergue for fabricating lies and misleading the Honorable Judge Sara Vance and Magistrate Africk . ... from my experience this business is usual for these attorneys I have dealt with in New Orleans; they are trickery misusing and abusing citizens, and not being respectful to the code of ethics, and in may cases, their behavior is tolerated by a percentage of the judges in our judicial system, including the local parish and federal judges in the state of Louisiana. (Memo Opp'n Summ. J. at 15).

Given the compelling evidence of fraud, the unsubstantiated factual allegations, and the abusive language used by Jones , the Court finds that Jones did not conduct a reasonable factual inquiry in this case and that he filed his motions for an improper purpose.

For the foregoing reasons, the Court concludes that Rule 11 sanctions are appropriate here. Plaintiffs assert that the Court

should sanction Jones by ordering him to pay attorneys's fees in the Amount of $ 1, 250; assessing punitive sanctions against him in the amount of $10,000 per counsel; striking Jones' motions; declaring the Songwriter(s) contract a forgery; requiring Jones to immediately retain counsel; and barring Jones from filing further documents in this case without an attorney or leave of court.

Once a court finds that counsel or an unrepresented party has violated Rule 11, the Court has discretion to impose an appropriate sanction. See Fed. R. Civ. P. 11 (c). Although the district court has broad discretion in fashioning an appropriate sanction, the sanction imposed should be the " least sever sanction" adequate to deter future violations of Rule 11. See Merriman v. Security Ins. Co., 100 F. 3d. 187, 1194 (5th Cir. 1996); Thomas, 836 F. 2d at 877. The purpose of the Rule 11 sanctions is to deter rather than to compensate. See Fed. R. Civ. P. 11 Adv. Comm Notes.

Sanctions may be monetary or nonmonetary and may include striking the offending paper. See id. The rule expressly provides that a court may also award the movant some or all of the reasonable attorney's fees and other expenses incurred As a direct result of the Rule 11 violation. See Fed. R. Civ. P. 11 (c) (2). See Hicks, 973 F. Supp. At 689. (amount of Rule 11 sanctions must be limited to those expenses actually and directly caused by the filing of the pleading found to violate Rule 11).
(citing Jennings v. Josha ISD. 948 F. 2d. 194, 19 (5th Cir. 1990).

In determing whether to impose a sanction, the court should consider [w]hether the improper conduct was willful, or negligent; whether its a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular

count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; what amount is needed to deter similar activity by other litigants. Fed. R. Civ. P. 11 Adv. Comm.

Considering all of these factors, the Court finds that a monetary sanction In the amount of plaintiffs' reasonable attorneys' fees and costs is necessary to deter future misconduct by Jones. In so concluding, the Court notes that the Fifth Circuit has imposed sanctions against Jones for filing frivolous pleadings in a prior copyright infringement action. In *Makedwde*, discussed above, Jones appealed the dismissal of his case twice. The Fifth Circuit dismissed Jones' original appeal as frivolous and remanded for determination of sanctions, which the district court imposed against Jones in the amount of $ 16, 797. When Jones again appealed to the Fifth Circuit, that Court recognized that "the previous imposition of attorney's fees was insufficient to deter frivolous filings,' and thus imposed sanctions of double costs and attorney's fees against Jones for filing a frivolous appeal. (See Minute Entry dated July 29, 1999, Civ. Action No. 91-879, citing Fifth Cir. Op. At 4.)

In addition to engaging in similar conduct in other litigation, Jones' actions do not represent an isolated event in this case. On May 27, 1999, Jones filed a motion to dismiss plaintiffs' claims for lack of personal jurisdiction, improper venue, insufficient service of process. Jones attached a one and one-half page memorandum to the motion., which referenced absolutely no law or facts to support his allegations.

Nevertheless, the filing of this wholly unsubstantiated motion required a response by plaintiffs as well as an investigation by the Court, which resulted in a six-page opinion denying Jones' motion. The Court has already discussed the implications of Jones' pro se litigant and finds that, after weighing all of the factors outlined above, it does not militate against imposing monetary sanctions here.

Following the 1993 amendments to Rule 11, courts have construed the rule as permitting the recovery of reasonable attorney fees and costs incurred in defending the motion found to have violated Rule 11, as well as those incurred in pursuing the Rule 11 sanctions themselves. See Fed. R. Civ. P. 11 (c)(1) (A) ("the court May award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion"); Margolis v. Ryan, 140 F. 3d. 850, 854-55 (9th cir. 1998) (noting that December 1, 1993 amendment to Rule 11 specifically allows a district court to include the costs associated with sanctions proceedings); in re Tutu Wells Counterclaim Lit., 120 F. 3d. 368, 388 (3d. Cir. 1997) (costs associated with the sanctions proceedings themselves can be recoverable) (citations omitted).

Here, plaintiffs have submitted an affidavit detailing attorney's fees incurred in researching and preparing their Rule 11 Motion. (See Pls. Mot. Rule 11 Sanctions Ex. 3, Eveline Aff.) The plaintiffs aver that they have expended $ 1, 250 in attorneys' fees, representing 10 hours of work at $ 125 per hour. The Court finds this amount reasonable under the circumstances. Plaintiffs are also entitled to costs, which they have yet verified. the Court further notes that, in addition to filing a Rule 11 motion, plaintiffs filed a memorandum in reply to Jones' opposition motions on March 9, 2000, of plaintiffs' reply.

Because the filing of plaintiffs' reply was directly caused by Jones' Rule 11 violation, and plaintiffs have not included the fees Incurred in filing this reply, the Court will allow plaintiffs to submit a statement of fees and costs relating thereto.

The Court orders Jones to pay plaintiffs $ 1, 250 in attorneys' fees to plaintiffs' counsel within ten days. Further, plaintiffs shall submit to the Court within five days a properly authenticated affidavit establishing the amount of their expenses related to the Rule 11 motion and their attorneys' fees and expenses incurred in filing their March 9th reply memorandum. Once the Court determines the reasonable amount of these fees and expenses, it will issue an order directing Jones to pay the additional monetary sanctions within ten days.

After considering Jones' fraudulent abuse of the judicial process both in this case and in other cases in this district, the Court recognizes that a monetary sanction alone is unlikely to deter him from filing future frivolous pleading. Accordingly, the Court also enjoins defendant rom filing any paper related to this case with the Court or its personnel until he pays the sanctions associated with plaintiffs' Rule 11 and reply motions in full. See. United Markets Int'l, Inc., v. Legg, 24 F. 3d 650 (5th Cir. 1994) (affirming district court decision to bar party from filing further pleadings until he paid sanctions levied against him for vexatious litigation). See also Support Systems Int'l v. Mack, 45 F. 3d. 185, (7th Cir. 1995) (directing clerks of all federal courts in circuit to return unfilled any papers litigant attempted to file until he pays sanctions in full); Jean v. Dugan, 29 F. Supp. 2d. 939, 941-42 (N.D. ind. 1998) (same).

The Court further orders the opposition memorandum Jones submitted on February 28 and Match 3, 2000, and the Songwriter(s) Contract attached as Exhibit 3 to the March 3rd memorandum , stricken from the record. The Court also notes that even after plaintiffs had notified him that they intended to seek Rule 11 sanctions based on the contents of his first two opposition motions, Jones filed a third reply motion and memorandum in opposition to plaintiffs summary judgment motion on March 22, 2000. Because the March 22nd motion restated the same factually and legally unsubstantiated allegations as the prior motions, and attached the fraudulent Songwriter(s) Contract, the Court also orders that motion , and its supporting memorandum and exhibits, stricken from the record.

The Court further orders that defendant is precluded from asserting any new argument or defense based on a claimed ownership interest in the copyright at issue. See Fed. R. Civ. P. 11 Adv. Comm. Notes ("This restriction does not limit the court's power to impose sanctions on a party, such as dismissal of a claim, preclusion of a defense, or preparation of amended pleadings.") Cf. Pope v. Federal Express Corp., 974 F. 2d. 982, 984 (8th Cir. 1992) (affirming dismissal of suit when district court found plaintiffs submitted manufactured evidence and perjured testimony and violated Rule 11) (citing Chambers v. NASCO, Inc., 501 U.S. 32, 111 S. Ct. 2133 (1991); Combs v. Rockwell Int'l Corp, 927 F. 2d. 486, 488 (9th Cir. 1991) (dismissal for using falsified document as evidence is appropriate sanction under Rule 11 or court's inherent power) (citations omitted) ; Pressey v. Patterson, 898 F. 2d. 1018, 1021 & 1021 n. 2 (5th Cir. 1990) (default judgment or dismissal sanctions evaluated under same standard and appropriate in extreme circumstances when lesser sanctions not adequate and party acts willfully or in bad faith.

The Court finds no authority for ordering punitive damages under Rule 11 and denies plaintiffs request for such sanctions. Plaintiffs cited Robeson Defense Committee v. Britt for the proposition that punitive sanctions in the amount of $10,000 per counsel have been awarded in a Rule 11 case. 132 F.R.D. 650 (E.D.N.C. 1989), aff'd in part and vacated in part sub. Nom., In re Kunstler 914 F. 2d. 505 (4th Cir. 1990). Robeson does not support plaintiffs' request, however, there, the Fourth Circuit vacated the sanction imposed by the district court, noting that " the amount of a monetary sanction should always reflect the primary purpose of deterrence" and "Rule 11 should not blindly be used to shift fees." Kunstler, 914 F. 2d. At 522-23.

Because of the plain language of Rule 11 indicates that reasonable attorney fees should be limited to those fees directly caused by the offending violation, the Court will not impose punitive sanctions here.

Finally, the Court denies plaintiffs' request that the Court require Jones to immediately retain counsel and prohibit him from filing future pleading absent this Court's approval.

III. Conclusion

For the foregoing reasons, the Court grants plaintiffs' motion for summary judgment. The Court also grants plaintiffs' motion for Rule 11 sanctions and sanctions Jones as indicated above. The Clerk of Court is instructed to return, unfilled, any pleadings tendered by Joe Jones in this case until he has satisfied all outstanding awards of sanctions.

New Orleans, Louisiana, this 15th day of May, 2000.

/s/ Sarah S. Vance
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO.00-30647OCTOBER TERM 2001

FILED: June 19, 2001

Joseph Johnson; Wardell Quezergue
Plaintiffs-Appellees

versus

Tuff N Rumble Management, Inc., et al

Plaintiffs- Appellees
versus
Joe Jones, d/b/a Melder Publishing Co.
Defendants-appellants

Appeal from the United States District Court
For the Eastern District Of Louisiana

United States court of Appeals
For the Fifth Circuit
No.00-30647

Joe Jones , d/b/a Melder Publishing Company
Appellant
versus
Joseph Johnson, et al
Appellee

BEFORE JOLLY, HIGGINBOTHAM AND JONES,

ORDER

Upon consideration of appellant's petition for rehearing filed June 19, 2001, it is

ORDERED that the petition for rehearing be denied.

Per Curiam

FOR THE COURT

BY:_____

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO.00-30647 OCTOBER
TERM 2001

FILED: June 19, 2001

Joseph Johnson; Wardell Quezergue
Plaintiffs-Appellees

versus

Joe Jones, d/b/a Melder Publishing Company

ORDER

Upon consideration of the motion of appellant in opposition to appellees motion for summary judgment from the District Court, order granting The plaintiffs -appellees motion for summary judgment,

ORDERED motion for summary judgment granted, FURTHER ORDERED, it is ordered that the petition for rehearing is denied.

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing en banc. See Fed. R. Civ. P. 41 (b); D.C.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO.00-30647 OCTOBER
TERM 2001

FILED: June 19, 2001

Joseph Johnson; Wardell Quezergue
Plaintiffs-Appellees

versus

Joe Jones, d/b/a Melder Publishing Company

ORDER

BEFORE THE COURT, are the motion of plaintiffs, Joseph Johnson and Wardell Quezergue, for summary judgment and Rule 11· sanctions against defendant, Joe Jones, d/b/a Melder Publishing Company, for the following reasons, plaintiffs' motion are granted.

ORDERED, that the motion of defendants in opposition to plaintiffs' motion for summary judgement be denied.

ORDERED that the defendants' motion for rehearing is denied.